

September 16, 1998
L-98-20

TO: John L. Thoresdale
Director Policy & Systems

FROM: Steven A. Bartholow
Deputy General Counsel

SUBJECT: Tier I Offset for Social Security Benefits Involving Extended Period of Eligibility Cases under the Social Security Act - Retirement Cases

This is in response to the request from a member of your staff as to whether Legal Opinion L-96-6 should also apply to retirement cases. L-96-6 held that when an individual is being paid under an extended period of eligibility (EPE) under the Social Security Act, the tier I annuity component of the railroad retirement annuity should be reduced by the social security benefit being paid. An EPE is a period of up to 36 months after the completion of a nine-month trial work period during which a disability claimant has a disability impairment but is engaged in substantial gainful activity (SGA). During the EPE, the person's social security benefit is only payable for any month during which the social security beneficiary is earnings below the SGA level (currently \$500.00 per month). The opinion also held that the reduction in the tier I annuity component for receipt of the social security benefit should be made for any month the social security benefit is actually paid under an EPE. If no social security benefit is payable for a month, no reduction in the tier I annuity component of the Railroad Retirement annuity is made for that month. Finally, L-96-6 held that after the reduction for the social security benefit is made, the remaining annuity should be reduced for any excess earnings the annuitant is earning.

L-96-6 involved a survivor annuitant under the Railroad Retirement Act. The question has now been raised as to whether this ruling is also applicable to retirement annuities under the Railroad Retirement Act. The basis of the holding of L-96-6 was that the reduction for a social security benefit in the tier I annuity component is based on the dual benefit reduction contained in the Social Security Act. The amount of the dual benefit reduction is the amount of the social security benefit before any reduction for work. Legal Opinion 96-6 also found that the reduction in an annuity during an EPE is not a reduction for work

but rather was a limitation on the payment of a social security benefit analogous to the payment provision contained in section 2(e)(4) of the Railroad Retirement Act.

Sections 3(m) and 4(i)(1) of the Act provide for the reduction of an employee and spouse annuity, respectively, for receipt of a social security benefit. Those sections both provide that the amount of the social security benefit reduction is to be the amount of the social security benefit before any reduction for work. This is identical to the provision analyzed in L-96-6. Therefore, whenever the Social Security Administration adjusts the payment of the social security benefit due to the EPE, the tier I annuity offset should also be adjusted.